(15)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR (C.G.)

DIVISION BENCH; HON'BLE SHRI K.H.N. KURANGA, CJ
HON'BLE SHRI L.C. BHADOO, J

CRIMINAL APPEAL NO.848 OF 2001

JUDGMENT FOR CONSIDERATION

Sd/-

J U D G E

7/11/05/2003

HON'BLE THE CHIEF JUSTICE

I agree.

Sd/-
Chief Justice

POST IT FOR: 9/11/05/2003

Sd/-
L.C. Bhadoo
Judge

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CRIMINAL APPEAL NO.848 OF 2001

APPELLANT/ ACCUSED	Naduram son of Shyamlal Gond Aged about 22 years, Resident Of village Khalari, P.S. Keshkal, District: Bastar (C.G.)
	VERSUS
RESPONDENT :	State of Chhattisgarh

Present: Smt. Kiran Jain, counsel for the accused/appellant.
Shri Gautam Bhaduri, Govt. Adv., for the State/respondent.

JUDGMENT
(Delivered on 9th of May, 2003)

The following judgment of the Court was delivered by **L.C. Bhadoo, J** : -

Accused/appellant Naduram has preferred this criminal appeal under Section 374 (2) of the Code of Criminal Procedure being aggrieved by the judgment of conviction dated 23/06/2001 passed by the learned First Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.104 of 2001 by which the learned Additional Sessions Judge after holding the above accused/appellant along with Baliyar alias Bhokalu guilty of the offence under Section 302 read with Section 34 and Section 201 of the Indian Penal Code convicted each of them

under the said Sections and sentenced them to undergo imprisonment for life and to pay fine of Rs.500/- each in default of payment of fine to further undergo rigorous imprisonment for six months and to undergo rigorous imprisonment for two years and to pay fine of Rs.200/- each in default of payment of fine to further undergo rigorous imprisonment for three months, respectively. Both the sentences were directed to run concurrently.

(2) The relevant facts for the disposal of this criminal appeal are that on 12/12/2000 Kawaluram, father of deceased went to Police Chouki, Vishrampur along with Sarpanch Ramlal, Bhanwar singh and Mainuram and gave Merg intimation (Ex.P/1) to the Incharge, Police Chowki with the allegation that his son Neeru was working with Bhanwar Singh and he used to drive his tractor. Yesterday night at about 7 to 8 after taking dinner he left the house along with Nadu Gond and today morning at about 6-7 Amar Singh informed him that outside his small garden the body of his son Neeru is hanging on the tree of tamarind. The body is touching the ground. On receiving this information, the Incharge of Police Chowki, Vishrampuri K.K. Mishra reached the site and saw that a rope was tied around the neck of deceased Neeru and the body was hanging by the rope. There was a plastic container tied with the waist of the deceased. Two shawls and one T-shirt were also lying at the site. It appeared that the shawls and the T-shirt are of accused Naduram. He had a doubt that Neeru had been murdered. Based on this report, the Chowki Incharge went to the site. After giving notice (Ex.P/3), he prepared Panchanama of the dead body (Ex.P/2) and also prepared Panchanama of the spot (Ex.P/4). One Sando Baniyan and a black full pant were taken into possession from accused Naduram vide Ex.P/5. Accused Naduram was arrested vide

Ex.P/6 and accused Baliyar was arrested vide Ex.P/7. The requisition for the post mortem of the body was made vide Ex.P/13. The post mortem was conducted by Dr. G.R. Dhaneliya. The post mortem report is Ex.P/8. The Chowki Incharge sent a Merg intimation vide Ex.P/9. Based on that the first information report (Ex.P/10 & P/11) was registered. The crime details were recorded in Crime Details Form vide Ex.P/14. One shawl and a T-shirt were taken into possession from the site vide Ex.P/15. The plastic container and the rope were taken into possession. A note of rupee ten was also taken into possession from Sahodara Bai vide Ex.P/17. The Patwari prepared the site map vide Ex.P/18. The Panchanama was prepared by the Sarpanch of Gram Panchayat, Khalari vide Ex.P/18. After completing the investigation, challan was filed against the accused persons.

(3) Learned Additional Sessions Judge after perusing the records, framed the charges against the accused persons for the offences under Sections 302 and 201 of the Indian Penal Code. The accused persons denied the charges.

(4) The prosecution in order to prove the offence against the accused persons examined in all seven witnesses at the trial. The statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure. They pleaded ignorance and said that they are innocent and have been falsely implicated in this case.

(5) The Learned Additional Sessions Judge after hearing the arguments of learned Public Prosecutor and the learned counsel for the accused persons passed the impugned judgment.

(6) We have heard learned counsel for the accused/appellant, perused the judgment of the trial Court and the evidence available on record.

(7) Learned counsel appearing for the accused/appellant argued that there is no evidence in this case. The prosecution has relied upon the theory of last seen. There is no other evidence which goes to show that the accused and the deceased were at any point of time having strained relation. The last seen evidence is a very weak type of evidence and without corroboration by any other circumstantial evidence looking to the present facts and circumstances of the case, the accused cannot be held guilty only on the basis of that evidence.

(8) On the other hand, learned Govt. Advocate appearing for the State/respondent supported the judgment of the trial Court.

(9) As far as the question of nature of the death of deceased Neeru as homicidal is concerned, learned counsel appearing for the accused/appellant has not disputed the same. Even otherwise PW-6 Dr. G.R. Dhaneliya has stated that on 12/12/2000 he was working as Assistant Surgeon in the Vishrampuri Hospital. Constable Virendra Mandavi brought the dead body of Neeru and on examination it was found that there was a rope around the neck of the deceased. The knot of the rope was on the right side which was moving on the rope. The rope was around the neck. There was ligature mark around the neck and clotted blood was present. The mark of the rope on the neck of the deceased was 2.5 cm in width. The face was in swollen condition. The tong was between the teethes. After removing the ligature mark by blade it was seen that the clotted blood was present. The injury was ante mortem in nature. One Castrol container of five

liters was tied by the rope around the waist of the deceased and the smell of the liquor was coming out of it and some liquor was also present in that container. The cause of death was asphyxia due to strangulation by rope. The death of the deceased was homicidal in nature. The doctor was not cross examined on the question of disputing the nature of the death. Therefore, in view of the statement of the doctor it stands proved that the deceased died on account of asphyxia due to strangulation by the rope and the nature of the death of the deceased was homicidal.

(10) As far as the involvement of the accused/appellant in the crime is concerned, there is no direct evidence of eye witness in this case. The whole case of the prosecution rests on the circumstantial evidence and in order to prove the offence against the accused/appellant based on circumstantial evidence the prosecution has to prove as per the settled principle laid down by the Hon'ble Apex Court i.e., in a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point only to the guilt of the accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused. It is on the basis of these principles that we shall examine the circumstantial evidence relied upon by the prosecution in this case.

(11) Now we shall proceed to examine the evidence available on record and to see as to whether the prosecution has been able to

establish the offence against the accused/appellant. The only circumstantial evidence against the accused/appellant has been adduced is that the accused along with other accused namely Baliyar were seen together with the deceased in the evening of 11th December, 2000. In this connection, PW-1 Kawaluram, father of the deceased, has stated that the report of the death of the deceased was given by him which is Ex,.P/1. In his presence the Police prepared the Panchanama of the dead body of the deceased vide Ex.P/2. He has stated that his son Neeru was working with one Amar singh and he informed him that his son is hanging near his small garden and after seeing the body he gave the report. He saw that the body was hanging with the tree of tamarind with the help of the rope which was tied around the neck of the deceased and one end of the rope was tied with the tree. PW-2 Somnath is also the witness of Panchanama and seizure of the T-shirt of the accused vide Ex.P/5. PW-3 Jugbati, mother of the deceased, has deposed that his son had died about six months prior to recording of her evidence. In the night at about 8.00 accused Naduram and Baliyar came to her residence and they called Neeru and thereafter they took him along with them. Next morning his son was found in hanging position. In the cross examination, she has stated that the accused persons and his son Neeru were friends. There was no strained relation or quarrel took place between them. Since last 2-4 years the accused persons were friends of her son. At the time when the accused persons called her son she was in the house. On earlier occasions they used to call my son and take him along with them. PW-4 Sulochana, niece of deceased Neeru, has stated that on the fateful day she was going to watch TV and when she was returning after watching TV she saw the accused persons and deceased Neeru at the residence of Mainu consuming liquor. Thereafter she saw Neeru in a dead

condition. She further stated that she did not see Neeru and the accused persons quarrelling. In the cross examination she has stated that she had not seen them consuming the liquor but she saw the accused persons and the deceased entering into the house of Mainu. PW-5 Mainu has stated that on the fateful night all the three persons namely the accused and the deceased came to his house, consumed liquor and thereafter they took one bottle of liquor for Rs.10/-. Thereafter they left his house. Because all the three insisted him, therefore, he also consumed the liquor. In the cross examination, he has stated that deceased Neeru and accused Naduram came to his house. Naduram took the wine and the money was also given by him. Accused Naduram and deceased Neeru were in a heavily drunken condition and were not in a position to walk properly. This is the all evidence in this case. The dead body of the deceased was found next morning near the small garden of Amar Singh in hanging position on a tree of tamarind. The nylon rope was found tied around the neck and the other end of the rope was tied with the branch of the tree and the body of the deceased was touching the ground. On fair scrutiny of the evidence, the only evidence is that the deceased left his house along with the accused persons and thereafter Sulochana saw all the three persons entering into the house of mainu and Mainu has stated that accused Naduram and deceased Neeru were in a heavily drunken condition. There is no evidence which goes to show that during this period the deceased and the accused were noticed quarrelling. Even Mainu has stated that both the deceased and accused Naduram were in a heavily drunken condition. The mother of the deceased has stated that the accused and the deceased were friends and she never noticed any strained relation between them nor saw them quarreling. Therefore, there is no iota of evidence which persuaded the Court to

infer that on account of any reason there was a chance for the accused to commit the murder of deceased Neeru. Even in the charge-sheet it has been mentioned that the deceased and the accused used to bring call-girls and during the drunken condition some dispute took place between them and thereafter the accused persons murdered Nirau by the nylon rope. But to this effect the prosecution has not adduced any evidence that how the Investigating Officer came to this conclusion and if it was so then why any evidence regarding that they called the call-girls has not been adduced without which no inference can be drawn. The last seen circumstance is a very weak type of evidence unless it is supported by some other independent material evidence. The Apex Court in the case of **Bodhraj alias Bodha & others Vs. State of Jammu & Kashmir** reported in **(2002) 8 SCC 45** has held that the last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. The Apex Court further held that it would be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together. Similarly the Apex Court in the case of **Subhash Chand Vs. State of Rajasthan** reported in **(2002) 1 SCC 702** has specifically held that last seen together - must be near about the date and time of the incident. Merely on the last seen, the accused persons cannot be held guilty and looking to the facts and circumstances of the case the prosecution has not been able to adduce any circumstance to enable the Court to draw any inference. On the contrary, the mother of the deceased has stated that the accused and the deceased were having good relations. Therefore, we are of the,

opinion that the prosecution has not been able to establish and prove the offence against the accused appellant merely based on the one circumstance and as per the established principle the prosecution has not been able to complete the chain of circumstances which persuades the Court to take a view that the accused is the only person responsible for the murder of the deceased and through the last seen theory in the facts and circumstances of the case no conclusive inference can be drawn that the accused is the only person who committed the murder of the deceased and in all probabilities there is no possibility that either the deceased himself committed suicide or anybody else has committed the murder. The accused/appellant in his statement has simply pleaded ignorance about the death of the deceased. He has not explained that when they departed from each other. If he would have said something that might have helped the Court in arriving at the decision, but even otherwise if the accused has not pleaded any defence the prosecution has to adduce evidence to persuade the Court to believe the circumstantial evidence and to hold the accused/appellant guilty.

(12) In view of the above, we are of the opinion that in the present case the prosecution has not been able to prove the offence against the accused/appellant beyond reasonable doubt and the finding of the learned trial Court based on circumstance of last seen, looking to the facts and circumstances of the case is not based on legal evidence. Therefore, it cannot be sustained.

(13) In the result, the appeal of the accused/appellant is allowed. The judgment of the trial Court convicting the accused/appellant for the offences under Sections 302 and 201 of the

Indian Penal Code is set aside. The accused/appellant is acquitted of the charges. The accused/appellant be set at liberty forthwith if not required in any other case.

Sd/-
Chief Justice

Sd/-
L.C. Bhadoo
Judge

Brajesh*